

## Office of the Secretary, HUD

## § 5.430

this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

[61 FR 9045, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.425 was removed, effective Apr. 28, 2000.

### § 5.430 Federal preference: Rent burden.

(a) *Rent burden preference: how determined.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(1) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(2) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(iv) For purposes of the Section 8 Certificate/Voucher programs, rent for an applicant who owns a manufactured home, but rents the space upon which it is located, includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements. In addition, for this program, rent for members of a

cooperative means the charges under the occupancy agreement between the members and the cooperative.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement; or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts,

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or must obtain the information directly from the utility or service supplier.

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### Subpart E—Restrictions on Assistance to Noncitizens

AUTHORITY: 42 U.S.C. 1436a and 3535(d).

#### § 5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or non-citizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) which covers:

- (i) HUD's Public Housing Programs;
- (ii) The Section 8 Housing Assistance Programs; and
- (iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities—(1) Covered individuals/persons and families.* The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) *Covered entities.* The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term "responsible entity" is used in this subpart E

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to refer collectively to these entities, and is further defined in § 5.504.

#### § 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

#### § 5.504 Definitions.

(a) The definitions *1937 Act*, *HUD*, *Public Housing Agency (PHA)*, and *Section 8* are defined in subpart A of this part.

(b) As used in this subpart E:

*Child* means a member of the family other than the family head or spouse who is under 18 years of age.

*Citizen* means a citizen or national of the United States.

*Evidence of citizenship or eligible status* means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

*Family* has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

*Head of household* means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

*Housing covered programs* means the following programs administered by the Assistant Secretary for Housing:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).